STATE OF MICHIGAN

COURT OF APPEALS

DANIEL M. BRADY,

Plaintiff-Appellant,

v

JULIANA DISCIPIO and ERIN DAVIS,

Defendants-Appellees,

and

MELISSA FIEMA,

Defendant.

UNPUBLISHED
September 12, 2000

No. 213281
Oakland Circuit Court
LC No. 96-519658-NO

Before: Owens, P.J., and Jansen and R. B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action in favor of defendants, which was entered following a jury trial. We affirm.

Plaintiff attended a party at Discipio's house. During the party, Fiema grabbed plaintiff by the arm and began pulling him through the house. Plaintiff requested the assistance of Davis, who grabbed plaintiff by the other arm. Plaintiff lost his balance and was injured when his face impacted a glass terrarium. Plaintiff filed a complaint against defendants alleging that Discipio owed him assurances that the premises were in a safe condition and no physical harm would befall him while he was on the premises, which she breached. Plaintiff further alleged that Fiema and Davis carelessly and negligently grabbed him and pulled him down the hallway, where he was injured.

Plaintiff argues on appeal that the trial court erred when it denied his motion for a new trial on the ground that the verdict was not against the great weight of the evidence. We disagree. A trial court's ruling on a motion for new trial is reviewed for an abuse of discretion. *McPeak v McPeak (On*

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Remand), 233 Mich App 483, 490; 593 NW2d 180 (1999). The denial of a motion for new trial can only be reversed where the "denial was so palpably and grossly violative of fact and logic that it evidenced not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Bean v Directions Unlimited, Inc*, 462 Mich 24, 34-35; 609 NW2d 567 (2000). Substantial deference is given to the trial court's conclusion that a verdict was not against the great weight of the evidence. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

The jury's verdict, that defendants were not negligent, was supported by competent evidence. Defendants testified that alcohol was not consumed during the party and no one was intoxicated. This testimony was supported by Discipio's sister, who testified that she did not see bottles of alcohol or anyone intoxicated and no alcohol was consumed during the party. There was also testimony that plaintiff's injury was the result of teenagers engaged in horseplay, not negligence. Davis testified that she released plaintiff's arm when she realized that there was going to be a tug of war situation. Davis also stated that Fiema's socks slipped while she was holding onto plaintiff's arm, causing Fiema and plaintiff to fall. Davis thought that plaintiff could have freed himself from Fiema's grip, but he went along with Fiema's horseplay. Fiema testified that she released plaintiff's arm in the middle of the hall, and plaintiff fell as he continued to run around the corner. Fiema thought that the actions could have been interpreted as flirting. Given this evidence, the jury's verdict was not manifestly against the clear weight of the evidence. The trial court did not abuse its discretion when it denied plaintiff's motion for a new trial.

Plaintiff's next argument is that the trial court erred when it excluded interrogatories. The lower court transcripts do not support plaintiff's contention that the trial court was presented with the issue of the admissibility of the interrogatories. Since the issue was not raised and decided in the trial court, it is not properly before this Court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994); *Grand Rapids Employees Independent Union v City of Grand Rapids*, 235 Mich App 398, 409; 597 NW2d 284 (1999).

Plaintiff's final argument is that the trial court erred when it instructed the jury. Plaintiff failed to object to the instructions. To preserve for review an issue concerning a jury instruction, a party must object on the record before the jury retires to deliberate. *Phinney v Perlmutter*, 222 Mich App 513, 556; 564 NW2d 532 (1997). This Court will review an unpreserved issue concerning an error in jury instruction only when necessary to prevent manifest injustice. *Id*. at 557.

Here, failure to review the issue would not result in manifest injustice because the jury was adequately informed of plaintiff's theories and properly instructed on the applicable law.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Robert B. Burns